HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 381 of 2006

1. Ashan Khan aged 40 years
   S/o Sri Yusuf Khan
2. Smt. Shad Bano aged 68 years
   W/o Sri Yusuf Khan
3. Smt. Shabli aged 25 years
   D/o Sri Yusuf Khan
4. Smt. Rehana aged 45 years
   W/o late Sri Yunus Khan
   Shakir aged 59 years S/o Sri Mubarak Khan
   R/o Sihali Jageer, Tehsil Hasanpur
   District Jiyotibafulenagar, U.P. ....Applicants

Versus

1. Smt. Faheem Begum
   W/o Sri Ashan Khan
   D/o Sri Azad Khan
   R/o Darau, P.S. Kitcha
   District U.S. Nagar
2. State of Uttaranchal ....Respondents

Sri Z. U. Siddique learned counsel for the applicants.
Shri Amit Bhatt and Sri Rajeev Mohan learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the order dated 23.04.2004 passed by the Chief Judicial Magistrate, U. S. Nagar in criminal case No.668/2005 under sections 498A, 323, 506 IPC and ¾ Dowry Prohibition Act.

2. Brief facts of the case are that the respondent No.1 filed a complaint on 9.3.2004 before the Magistrate alleging therein that the marriage was solemnized between the applicant No. 1- Ashan Khan and respondent No.1-Smt. Faheem Begum eleven years ago. Out of their wedlock, two children, namely, Ruman and Baby aged about 11 and 9 years respectively were born. It was further alleged that the applicants-accused wanted

to send the applicant No.1 to Saudi Arabia and in this way the applicant No.1-husband and his family members were demanding a sum of Rs. 50,000/- from the parents of the respondent No. 1- wife. When the said demand was not fulfilled the respondent No. 1 was subjected to cruelty by her husband and his family members. When the applicant No.1 went to Saudi Arabia, the applicants-accused again demanded Rs.50,000/- from the parents of respondent No. 1 wife on the pretext that they had taken a loan of Rs. 50,000/- for sending the applicant No.1 to Saudi Arabia and as such they have to repay the said loan. When the respondent No. 1 shown her inability to give the huge amount, she was also subjected to harassment and cruelty by the applicants-accused. It was further alleged that the applicants-accused took the respondent no.1 on a jeep on the assurance that they would drop her in his parental house for few days. When they reached there the applicants-accused forcibly alighted her from the jeep and again demanded a sum of Rs. 50,000/-. She was also beaten by them. When the witnesses reached at the spot she was rescued. Thereafter, she went to the police station to lodge the report, but the report was not lodged. Thereafter, the respondent No.1 also approached the S.S.P. but no action was taken against the applicants-accused. Thereafter, the respondent no.1 filed the present complaint before the Chief Judicial Magistrate. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter the summoned the applicants vide order dated 23.04.2004. Feeling aggrieved by the order of Magistrate, the applicants preferred the present petition.

3. Learned counsel for the applicant contended that there is no prima facie case is made out against the

applicants and the complaint is totally frivolous and concocted. It was further contended that the statements recorded under section 200 & 202 Cr.P.C. do not disclose any offence against the applicants. Learned AGA refuted the contention. Before dealing with the contention, it would be just and proper to refer the judgment of the Hon'ble Supreme Court delivered in Union of India Vs. Prakash P. Hinduja 2003 SCC (Cri) p/1314 in which it has been held that Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The grounds on which the prosecution initiated the proceedings can also be quashed. The grounds on which power under section 482 of the Code can be exercised to quash the criminal proceedings are: (i) where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, (ii) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (iii) where there is an express legal bar engrafted in any of the provisions of the 'Code' or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

4. In the light of above guidelines, I have to see whether the prima facie case is made out against the applicants or not. The complaint clearly discloses the cause of action and there is sufficient averments in the complaint that there is a prima facie case against the

applicants under sections 498A, 323, 506 IPC and ¾ Dowry Prohibition Act. It was also stated in the complaint that the respondent no.1 was subjected to cruelty by her husband-applicant no. 1 prior to the visit of Saudi Arabia. Section 498-A IPC is a continuing offence. Non-presence of the applicant no. 1 on the subsequent incident i.e. 7.09.2003 does not make any difference. The complainant has also adduced the evidence of two witnesses in support of his complaint. There is also legal evidence against the present applicants.

5. It was contended that here is a delay in filing the complaint and the theory as has been narrated in the compliant is not probable. Learned AGA refuted the contention. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822 that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in state of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151 that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it

accusation would not be sustained. That is function of the trial court.

6. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. {State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.

7. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application (s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 07.06.2006
LSR